

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FELIPE FOWLKES,
Plaintiff,

V.

KATHLEEN M. DENNEHY, et al.,

C.A. No. 05-11749-JLT

MR. ANDERSON’S AMENDED MOTION TO DISMISS

Now comes Mr. Anderson in the above matter amending his prior Motion to Dismiss and respectfully request that this Honorable Court dismiss plaintiff's claims against him pursuant to Fed. R. Civ. P. 12(b)(5). The reasons for this Motion are as follows:

1. On August 17, 2006, this Court issued an Order that plaintiff shall serve the Amended Complaint on each defendant within 120 days and file proof of service within 130 days. See August 17, 2006 Order.
2. On May 17, 2007, this Court issued an order “that Plaintiff shall file proof of service on Defendant Anderson within 20 days”. See May 17, 2007 Order.
3. On June 7, 2007, plaintiff filed with the Court proof of service that Mr. Anderson was served on April 1, 2007. See Plaintiff’s Proof of Service.
4. Pursuant to this Court’s Order and Fed. R. Civ. P. 4(m), service of the Complaint was to be made within 120 days of filing the Complaint. This Court issued its Order on August 17, 2006. Pursuant to Fed. R. Civ. P. 4(m), Mr. Anderson should have been served by December 18, 2006 (120 days after the summons was issued).

5. Further, plaintiff did not timely file his Proof of Service with the Court within 20 days as ordered to in this Court's May 17, 2007 Order.
6. Plaintiff's claim against Mr. Anderson should be dismissed for failure to serve pursuant to Fed. Civ. P. 12(b)(5).

WHEREFORE, Mr. Anderson respectfully requests that he be dismissed as a defendant in the present case.

Respectfully submitted,

MR. ANDERSON,
By his attorney,

NANCY ANKERS WHITE
Special Assistant Attorney General

Date: June 8, 2007

/s/ Daryl F. Glazer
Daryl F. Glazer, Counsel
Department of Correction
Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110-1300
(617) 727-3300, ext. 102
BBO #567138
Dfglazer@doc.state.ma.us